



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/166004

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 12, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a telephonic hearing was held on July 07, 2015.

The issue for determination is whether the agency properly determined the sufficiency of petitioner's FS effective June 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Rachel Petrick, Lead ESS  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner had a review in May 2015. At that time it was reported that petitioner has monthly income from Social Security in the amount of \$892, pays rent of \$238, and pays for her electric and phone utilities.

3. On May 18, 2015 the agency issued a notice of decision to petitioner stating that effective June 1, 2015 her FS would decrease to \$29 because her utility expenses decreased and because there was more income in the home.

### **DISCUSSION**

FS benefits are calculated pursuant to 7 C.F.R. §273.9. The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, §8.1.2. The FS Handbook can be viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In calculating the petitioner's allotment, the agency must follow the procedure set by the federal FS regulations, which is restated in the FS Handbook. In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the FoodShare Handbook, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full.

Petitioner did not understand why her FS decreased. As the agency explained at hearing, the decrease occurred, in part, due to a change in policy that applied to everyone receiving FS in Wisconsin. The policy in question relates to Operations Memo #14-16, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-16amended2.pdf>. Of particular relevance here, it states that FS members will receive the Limited Utility Allowance (LUA), if the member is obligated to pay, or is actually paying for two or more of any non-heat qualifying utility expenses. The qualifying utility expenses are phone, water, sewer, electric, cooking fuel, or trash. Petitioner pays for electric and phone, thus the agency gave petitioner the LUA of \$321. See FS Handbook, §8.1.3. More than likely, the petitioner previously received a larger utility credit, so this change impacted the amount of FS she received after the change in policy was applied to her case. I add for petitioner's information that this Operations Memo took effect due to federal changes made in The Agricultural Act of 2014 (P.L. 113-79). Petitioner can find this information at [http://www.fns.usda.gov/sites/default/files/LIHEAP\\_Implementation\\_Memo.pdf](http://www.fns.usda.gov/sites/default/files/LIHEAP_Implementation_Memo.pdf). As noted in the policy, this change was to take place for all FS applications with a filing date on or after April 28, 2014 and FS renewals processed on or after April 28, 2014 for a recertification period starting June 1, 2014, as it did here when she completed her renewal in May 2015. There is no evidence that the agency acted incorrectly under the policy as it applies to petitioner's case.

The agency also explained that her FS decreased due to the fact that the agency was now budgeting her income correctly. The agency admitted its error in under-budgeting her income previously. There is no evidence to show that the agency was incorrectly budgeting her income for June 2015.

The agency presented the budget screens to show how it determined petitioner's FS. Petitioner did not quarrel with the arithmetic. I have reviewed the information post-hearing as well and find no errors in the computations.

I remind the petitioner that if her income decreases, or has other changes to her household, she must report and verify that to the agency so her FS can be redetermined. I add, assuming petitioner feels that this is not a fair determination, that I do not have equitable powers and cannot deviate from what law and policy dictate. See *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). I further remind petitioner that she is within her rights to appeal any decision affecting her FS, including whether it be an overpayment issue or further reductions.

### **CONCLUSIONS OF LAW**

The agency correctly determined petitioner's FS effective June 1, 2015.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 23rd day of July, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 23, 2015.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability